

- C1  
Contd
- c) delivering said suspension comprising said microbeads onto an intended environment; and
  - d) allowing said microbeads to dehydrate.

### Remarks

Applicants are hereby amending Claim 1 to specify that the hydrophilic matrix of the hydrogel microbeads is cured using either non-chemical means at temperatures from about 10°C to about 40°C or using chemical means (basis therefor being found, e.g., at page 15, lines 10 – 12, and at page 16, line 20, of Applicant's specification).

### Rejection Under 35 U.S.C. Section 103

Claims 1-8, 10, and 12 -18 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Akashi et al. (U.S. Patent No. 5,686,385). The rejection is respectfully traversed for the following reasons.

Although Applicant believes that the term "hydrogel" in Claim 1 is sufficient to distinguish over Akashi (as explained in Applicant's previous response dated February 6, 2002, the contents of which are hereby incorporated by reference), in order to advance prosecution Applicant has further amended Claim 1 to specify that the temperature range used for non-chemical curing is outside the drying temperature range of Akashi.

Akashi's express intent is drying rather than hydrogel formation. As indicated previously, Akashi actually teaches away from hydrogel formation by expressing a preference for high drying temperatures. Applicant therefore respectfully submits that the instant claims are indeed unobvious and patentable over Akashi and respectfully requests that the rejection under Section 103 be withdrawn.

**Obviousness-Type Double Patenting Rejection**

Claims 1-8 and 10-18 apparently remain provisionally rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-50 of copending Application No. 09/426,140. This rejection is respectfully traversed for the following reasons.

Enclosed with Applicant's amendment filed on October 5, 2001, without prejudice, was a "Terminal Disclaimer Under 37 C.F.R. Section 1.321(b)," which disclaimed the portion of the term of any patent granted on the instant application that would extend beyond the expiration date of the term of any patent granted on pending second application USSN 09/426,140 or of any patent granted on pending third application USSN 09/425,761. The Disclaimer also indicated that the instant application and the pending second and third applications are commonly owned by 3M Innovative Properties Company by virtue of assignments recorded at Reel 010344, Frame 0332, on October 22, 1999; Reel 010341, Frame 0737, on October 22, 1999; and Reel 010343, Frame 0770, on October 22, 1999. The Disclaimer further indicated that the chain of title of the instant application has been examined in order to comply with 37 C.F.R. Section 3.73(b).

Since under 37 C.F.R. Section 1.130(b) a terminal disclaimer in compliance with 37 C.F.R. Section 1.321(c) can be used to overcome a non-statutory double patenting rejection, Applicant respectfully requests that the double patenting rejection be withdrawn.

**Non-Elected Claims**

Applicant respectfully requests that the Examiner reconsider the status of Claim 9. Claim 9 has not yet been canceled, pending the Examiner's determination as to whether the species of Claim 9 are embraced by an allowable generic claim.

**Concluding Remarks**

Reconsideration and allowance of Applicant's claims are respectfully solicited.

Respectfully Submitted By:

March 29, 2002

Date

Lucy C. Weiss  
Lucy C. Weiss  
Registration No. 32,834

Office of Intellectual Property Counsel  
3M Innovative Properties Company  
P.O. Box 33427  
St. Paul, Minnesota 55133-3427  
Telephone: (651) 733-1189

55197US002.am3.doc